

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEW MEXICO**

LUCIANO P. GUERRA,

Petitioner,

v.

No. CV 13-734 LH/CG

JAMES JANECKA, Warden, and  
GARY K. KING, New Mexico  
Attorney General

Respondents.

**ORDER ADOPTING MAGISTRATE JUDGE'S  
PROPOSED FINDINGS AND RECOMMENDED DISPOSITION**

**THIS MATTER** is before the Court on United States Magistrate Judge Carmen E. Garza's *Proposed Findings and Recommended Disposition* ("PFRD"), filed on July 10, 2014, (Doc. 16). In the PFRD, Judge Garcia recommended that Petitioner Luciano P. Guerra's *Petition Under 28 U.S.C § 2254 for Writ of Habeas Corpus by a Person in State Custody* ("Petition"), (Doc. 12), be dismissed with prejudice. Petitioner's *Response to the Proposed Disposition* ("Objections") was timely filed on July 23, 2014, (Doc. 17). Petitioner's Objections are considered below as part of this Court's *de novo* review of the PFRD, the Objections, and the record.

In his Objections, Petitioner disagrees with Judge Garza's finding that his trial attorney was not ineffective. (Doc. 17 at 1). He asserts that his attorney was ineffective because he pursued a theory of self-defense "that was obviously not supported by the case's history." (Doc. 17 at 1). However, Petitioner himself argued that he was entitled to a jury instruction on self-defense in his Petition.

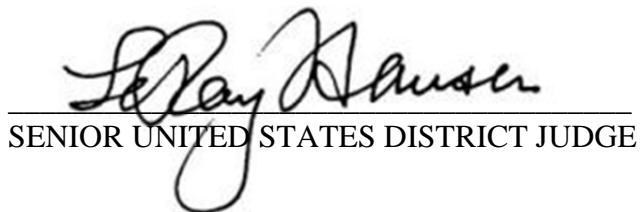
(Doc. 12 at 12). Moreover, the undisputed facts of the case indicate that the victim was stabbed during an altercation with Petitioner and that Petitioner had told witnesses that he had been jumped by the witness. (See Doc. 16 at 2) (citing Ex. G. at 8, 11). Thus, Petitioner's assertion that a defense based on the theory of self-defense was "obviously not supported by the case's history" is baseless and contradicted by the record and all documents Petitioner has filed other than his Objections.

Petitioner also argues that his attorney erred by failing to assert an intoxication defense. (Doc. 17 at 1). This conclusory assertion was thoroughly addressed by Judge Garza in the PFRD. (See Doc. 16 at 11-13). Petitioner has not pointed to any error in Judge Garza's factual findings or legal analysis and, therefore, this objection is overruled.

Having conducted a de novo review of the filings, the PFRD, and Plaintiff's Objections, the Court adopts the PFRD and overrules Plaintiff's Objections.

**IT IS SO ORDERED THAT:**

- 1) The Magistrate Judge's *Proposed Findings and Recommended Disposition*, (Doc. 16), is **ADOPTED**; and
- 2) Petitioner Luciano P. Guerra's *Petition Under 28 U.S.C § 2254 for Writ of Habeas Corpus by a Person in State Custody*, (Doc. 12), is **DISMISSED WITH PREJUDICE**.

  
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SENIOR UNITED STATES DISTRICT JUDGE